

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION INSTITUTE
1875 Eye St., NW, Suite 800
Washington, DC 20006,

Plaintiff,

v.

EXPORT-IMPORT BANK
OF THE UNITED STATES
811 Vermont Ave., NW
Washington, DC 20571,

Defendant.

Civil Action No. 19-1915

COMPLAINT

1. Plaintiff Cause of Action Institute (“CoA Institute”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeking disclosure of records maintained by Defendant Export-Import Bank of the United States (“Ex-Im Bank”). Those records are responsive to two FOIA requests and relate to communications to or from named agency employees during the time Congress held hearings for Kimberly Reed’s nomination to be President of the Ex-Im Bank, and communications to or from named agency employees referring to the Government Accountability Office and related matters.

JURISDICTION AND VENUE

2. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

3. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

4. CoA Institute is a 501(c)(3) nonpartisan government oversight organization that uses investigative, legal, and communications tools to educate the public about how government

accountability, transparency, and the rule of law protect individual liberty and economic opportunity. It regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, and publicly disseminates its findings, analysis, and commentary.

5. Ex-Im Bank is an agency within the meaning of 5 U.S.C. § 552(f)(1). It has possession, custody, and control of records to which CoA Institute seeks access and that are the subject of this Complaint.

FACTS

I. FOIA Request # 201800076F

6. By letter, dated September 20, 2018, CoA Institute sent a FOIA request to Ex-Im Bank seeking access to all records reflecting communications to or from four named Ex-Im Bank employees that included any of twelve search terms that were listed in the letter. Ex. 1.

7. The date range for the request was “from June 1, 2018 to the present[,]” and the request defined the term “present” as “the date on which the agency begins its search for responsive records.” *Id.*

8. CoA Institute sought a public interest fee waiver and to be classified as a representative of the news media for fee purposes. *Id.* at 2–3.

9. By email, dated September 21, 2018, Ex-Im Bank acknowledged receipt of the request and assigned it tracking number 201800076F. Ex. 2.

10. CoA Institute has not received a final determination on or any records responsive to this request.

II. FOIA Request # 201900047F

11. By letter, dated May 24, 2019, CoA Institute sent a FOIA request to Ex-Im Bank seeking access to records reflecting communications to or from five named Ex-Im Bank employees that included any of five search terms that were listed in the letter. Ex. 3.

12. The date range for the request was “from October 1, 2017 to the present[,]” and the request defined the term “present” as “the date on which the agency beings its search for responsive records.” *Id.*

13. CoA Institute sought a public interest fee waiver and to be classified as a representative of the news media for fee purposes. *Id.* at 2–3.

14. By email, dated May 24, 2019, Ex-Im Bank acknowledged receipt of the request and assigned it tracking number 201900047F. Ex. 4.

15. Ex-Im Bank acknowledged CoA Institute’s request for a fee waiver but did not make a determination. *Id.*

16. CoA Institute has not received a final determination on or any records responsive to this request.

COUNT 1

Violation of the FOIA: Failure to Comply with Statutory Deadlines

17. CoA Institute repeats all of the above paragraphs.

18. The FOIA requires agencies to respond to requests within twenty (20) business days or, in “unusual circumstances,” thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A)–(B).

19. More than twenty (20) business days have passed since Ex-Im Bank received FOIA Requests # 201800076F and 201900047F.

20. Ex-Im Bank has not provided a final determination on or produced any records responsive to either of the requests at issue in this Complaint within the statutory time limits.

21. Ex-Im Bank therefore has failed to comply with the FOIA’s statutory deadline to issue a final determination.

22. CoA Institute has exhausted its administrative remedies for all the requests at issue in this Complaint under 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, Plaintiff CoA Institute respectfully requests and prays that this Court:

- a. Order Ex-Im Bank to issue a final determination on each of the requests at issue in this Complaint within twenty (20) days of the date of the Order;
- b. Order Ex-Im Bank to produce all responsive records promptly upon issuing a final determination;
- c. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. Grant such other relief as the Court may deem just and proper.

Date: June 26, 2019

Respectfully submitted,

/s/ Jessica L. Thompson

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